



ATTACHMENT A

Remarks

Considering the matters raised in the Office Action in the same order as raised, the Examiner states that “[c]laims have been amended to clarify the usage of the priority determination” and that “[t]he amendment proves a change in scope to independent claims 13 and 21 as these independent claims now explicitly state a priority determination for prioritizing files based on a personal profile and the like.” The Examiner concludes that “none of the amended claims show a patentable distinction over the prior art as evidenced by the following new grounds of rejection.”

It is respectfully pointed out that claim 13 was simply amended to include the subject matter of claim 14 and that the amendment made to claim 13 does not concern “prioritizing files” or the like. Similarly, claim 21 has been amended to include the subject matter of dependent claim 23 and while this claim is concerned with “prioritizing files” the amendment simply imports the subject matter of a dependent claim into a parent claim. Thus, it is respectfully submitted that the amendments made to claims 13 and 21 did not necessitate the citation of new art in that these claims simply relate to subject matter that was already claimed in claims dependent thereon. Hence, withdrawal of the finality of the rejection here is respectfully requested.

Claim 24 remains rejected under 35 U.S.C. § 112, second paragraph. The Examiner is, of course, correct here and a suitable amendment has been made in claim 24. As discussed below, the subject matter of claim 24 is now incorporated in independent claim 21.

Claims 1, 3-7, 9, and 11, have been rejected under 35 U.S.C. § 103(a) as being “unpatentable over” the previous cited Jiang patent. Independent claims 1, 7 and 11 have been amended as discussed below in order to more clearly distinguish over the Jiang patent. However, claim 9 has not been amended and the rejection thereof is respectfully traversed.

In rejecting the claims listed above the Examiner admits that “Jiang did not explicitly state executing an additional information transfer completed within the remaining time period.” The Examiner, however, contends that the Jiang “system tracks

the time period during which communications can be made as well as the time it takes to transfer a first content” and thus that “the system clearly maintains the remaining time period, simply the difference.” The Examiner also points out that the Jiang “system utilizes a unified content access layer that optimizes content transfer” and concludes that it “would have been clear to one of ordinary skill in the art that additional content should be transferred in the remaining time if possible as this would clearly optimize the content transfer overall.” To his credit, the Examiner has expanded on these contentions in the “Response to Arguments” section, and, in this regard, has referred to further statements in Jiang in arguing that “the system requests that ‘a large amount of content to be downloaded from the content provider, such as all of the day’s news stories from the Internet edition of a major newspaper’ and this is done ‘within a certain time period.’” The Examiner concludes that it is clear from the statements that “the system downloads multiple pieces of content within the predicted time period.”

It is again respectfully submitted that the Examiner is reading more into the Jiang patent than is actually disclosed therein. It is agreed that the Jiang patent is concerned with ensuring that information is transmitted during a predicted time period. However, there appears to be no specific teaching in Jiang of tracking the remaining time after a first transmittal and, more importantly, no teaching of executing an additional information transfer during the remaining time period. In this regard, in the example to which the Examiner has made reference in the “Response to Arguments” section, there is no disclosure in Jiang that the Jiang system does not simply transfer as much data (e.g., all of the day’s news stories) as it can within the ten minute time period for data transfer. With respect to motivation, it is agreed that this feature of the present invention is a desirable one, but this does not render the feature obvious. In fact, it is respectfully submitted that the opposite is true given the actual teachings of Jiang. Thus, it is respectfully submitted that claim 11 patentably defines over the Jiang patent.

Claims 13, 17-22, and 24 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the Jiang patent in view of a newly cited Pyhälammi patent. This rejection is respectfully traversed.

First, because of the amendments that have been made to claims 1, 7, and 11, it is believed that this rejection would apply to these claims as well and thus these claims will be discussed along with independent claims 13 and 21.

The Pyhälampi patent discloses a mobile content delivery system which is concerned with preventing the system “from managing present network load conditions while a message is being delivered or to be time delayed to suit the existing demands on a wireless network” (column 1, lines 38-45 cited by the Examiner). The reference provides for selection by a user of a class of delivery for the content and states that this class of delivery “can be selected by the user on a transaction basis, or subscription-based and pre-defined in a user profile”. The reference also refers to a “deliver NOW” and a specified “time delay delivery.” (This is described in the last paragraph of column 1 to which the Examiner has also referred.) In lines 46-61 of column 6 to which the Examiner has also made reference, Pyhälampi discloses assessing “past and present cell capacity, current user location, content file size, and time remaining to delivery content” and that if the time window in question is not an appropriate one “to deliver the message content, the queue priority of the message is adjusted based on the absolute time remaining to deliver the message content while taking into account the time lapsed to reach the ‘NO SEND’ decision.”

It is respectfully submitted that, even assuming for the sake of argument that the proposed combination of Jiang and Pyhälampi is a proper one, that the claims now presented define over that combination. For example, amended claim 1 recites that the predicting means predicts the time period based on both of the data rate and file priority while claim 7 recites that the predicting means predicts the time period based on file size, data rate and user preference. Amended claim 11 recites that the transferring of additional information is based on data rate and prioritization based on file importance and file size. Amended claim 13 recites that the priority determination for prioritizing files is based on both file importance and file size. Claim 21 recites, *inter alia*, that the priority determination is based on data rate, file size and file importance. It is respectfully submitted that each of these claims defines over the proposed combination. Although, as indicated above, the newly cited secondary reference is relevant to certain

aspects of the present invention. The reference simply does not disclose the features now claimed in the amended independent claims. Thus, allowance of these claims is respectfully solicited.

Claims 15 and 16 have been rejected under 35 U.S.C. § 103(a) as being patentable over Jiang in view of Pyhälammi "further in view of Lightner et al." This rejection is respectfully traversed.

It is respectfully submitted that claims 15 and 16 are patentable for at least the reasons set forth above in support of the patentability of claim 13 which is parent thereto. Further, the need to cite an additional reference in rejecting these claims is further evidence of the non-obviousness of the claims.

Allowance of the application in its present form is respectfully solicited.

END REMARKS